

IN THE IOWA DISTRICT COURT FOR AUDUBON COUNTY

STATE OF IOWA, ex rel., THOMAS J.)	
MILLER, ATTORNEY GENERAL OF IOWA)	LAW NO. _____
(99AG23112), and IOWA DEPARTMENT OF)	
NATURAL RESOURCES (99AG23542),)	
)	
Plaintiffs,)	
)	
vs.)	PETITION AT LAW
)	
LAWRENCE HANDLOS,)	
)	
Defendant.)	

COME NOW Plaintiffs State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and Iowa Department of Natural Resources (hereafter "DNR") and for their claim against Defendant Lawrence Handlos (hereafter "Handlos") state as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Handlos for water pollution, confinement feeding operation and construction permit violations, and storm water discharge violations committed at several hog confinement facilities owned and operated by Handlos in Audubon County, Iowa.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.

3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

5. Defendant Lawrence Handlos, resides at 1636 190th Street, Audubon, Iowa.

JURISDICTION

Water Pollution Control Regulations

6. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rulemaking authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

7. Iowa Code section 455B.186(1) prohibits the dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR.

8. A “water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code Supp. § 455B.171(36) (2003).

9. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation.

Iowa Code § 455B.191(1).

10. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter “EPC”), institute any legal proceedings, including an

action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

11. In addition to the duty to commence legal proceedings at the request of the DNR director or EPC, the Attorney General is authorized to institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of Iowa Code chapters 455B or 459, including orders or permits issued or rules adopted thereunder. Iowa Code § 455B.112.

Animal Feeding Operation Regulations

12. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

13. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

14. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

15. A person shall not begin construction of a confinement feeding operation structure requiring a permit unless the DNR first approves the person's application and issues to the person a construction permit. Iowa Code § 459.303(1). A person must obtain a permit to construct a confinement feeding operation structure if after construction the confinement feeding operation would have an animal unit capacity of at least one thousand animal units. Iowa Code § 459.303(1)(a)(1).

16. A confinement feeding operation beginning construction, installation or modifications after March 20, 1996, shall obtain a construction permit prior to beginning significant modifications in the volume or manner in which manure is stored, if the confinement feeding operation uses a formed manure storage structure and has an animal weight capacity of 625,000 pounds or more for animals other than bovine. 567 Iowa Admin. Code 65.7(1)(b)(2).

17. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b)(1) and (2).

18. The manure management plan shall include, inter alia, manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values, manure application methods, timing of manure application, and the location of the manure application. Iowa Code §§ 459.312(10)(b) and (c). In addition, the manure management plan shall include the total nitrogen available to be applied from the confinement feeding operation, identify the number of acres that will be available for the application of manure, and if manure is applied on land under a written agreement with another landowner, the written agreement shall indicate the acres on which manure may be applied. 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

19. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan. Iowa Code § 459.312(5); 567 Iowa Admin. Code 65.16(5).

20. For formed manure storage structures partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of

groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure. 567 Iowa Admin. Code 65.15(7)(b). The groundwater table means the average annual high water table determined by a licensed professional engineer and approved by the DNR. 567 Iowa Admin. Code 65.15(7)(c).

21. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

22. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

Storm Water Discharge Regulations

23. The director of the DNR is authorized to issue storm water discharge general permits for a class of facilities which could be described as conditioned by a single permit. Iowa Code § 455B.103A(1); 567 Iowa Admin. Code 64.4(2)(a)(1).

24. “[S]torm water” is defined as storm water runoff, snow melt runoff, and surface runoff and drainage. 567 Iowa Admin. Code 60.2.

25. No person shall operate any wastewater disposal system or part thereof without an operation permit issued by the director. 567 Iowa Admin. Code 64.3(1).

26. A Notice of Intent for coverage under a general permit must be made on the appropriate form provided by the DNR listed in 567 Iowa Admin. Code 60.3(2) and in accordance with 567 Iowa Admin. Code 64.6. For existing “storm water discharge associated with industrial activity,” with the exception of discharges identified in 567 Iowa Admin. Code 64.3(4)(b)(2) and (4), a Notice of Intent

must be submitted on or before October 1, 1992. 567 Iowa Admin. Code 64.3(4)(b)(1). For “storm water discharge associated with industrial activity,” which initiates operation after October 1, 1992, with the exception of discharges identified in 567 Iowa Admin. Code 64.3(4)(b)(2), a Notice of Intent must be submitted at least 24 hours prior to the date operation is scheduled to begin. 567 Iowa Admin. Code 64.3(4)(b)(3).

27. “[S]torm water discharge associated with industrial activity” is defined as the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant and includes certain construction activities. 567 Iowa Admin. Code 60.2. Industrial activity encompasses construction activity including clearing, grading and excavation activities except operations that result in the disturbance of less than one (1) acre of total land area which is not part of a larger common plan of development or sale. 567 Iowa Admin. Code 60.2(10).

28. The DNR has adopted a general permit for Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. 567 Iowa Admin. Code 64.15(2).

29. An applicant proposing to conduct activities covered by NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, is required to file a complete Notice of Intent by submitting to the DNR the following: 1) a fully completed Notice of Intent application form (Form 542-1415); 2) a general permit fee according to the schedule in 567 Iowa Admin. Code 64.16 payable to the DNR; and 3) a demonstration that a public notice was published in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur. 567 Iowa Admin. Code 64.6(1)(a)-(c).

30. NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, requires that a storm water pollution prevention plan shall be developed for each construction site covered by the permit. The plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharge and to assure compliance with the terms and conditions of the permit. Facilities must implement the provisions of the storm water pollution plan as a condition of the permit. The pollution prevention plan shall include appropriate controls including stabilization measures, and structural controls. NPDES General Permit No. 2, § IV.

31. The enforcement provisions of Iowa Code chapter 455B, division III, part 1 of Iowa Code chapter 455B apply to general permits for storm water discharge. Iowa Code § 455B.103A(5).

FACTS

32. On July 21, 2003, the EPC voted to refer the matters described in paragraphs forty-five (45) through fifty (50), fifty-two (52) through fifty-five (55), and fifty-seven (57) through sixty-two (62) to the Attorney General for purposes of initiating judicial enforcement proceedings against Handlos. The Attorney General joins in this action. In addition, the Attorney General, using his independent authority, includes the matters described in paragraphs forty-four (44), fifty-one (51), fifty-six (56), and sixty-three (63).

Handlos Facilities

33. Handlos owns and operates nine (9) confinement operations in Audubon County with a purported total capacity of 49,600 hogs. All of the confinement feeding buildings at the Handlos facilities have below building concrete pits for manure storage. These facilities are specifically described below.

4A King Farm

34. Handlos owns and operates a hog confinement facility designated 4A King Farm, located in the SE¹/₄, Section 18, Cameron Township, Audubon County, Iowa. The unpermitted facility is an 18,000 head nursery operation with five (5) buildings; three (3) buildings constructed in 2001 and two (2) buildings constructed in 2002.

A2 Ranch

35. Handlos owns and operates a hog confinement facility designated A2 Ranch, located in the NW¹/₄ of the NE¹/₄, and the NE ¹/₄ of the NW¹/₄, Section 21, Cameron Township, Audubon County, Iowa. This finishing operation has twenty-four (24) buildings. Six (6) buildings were constructed prior to 1994. Construction Permit No. CP-A94-113, issued in 1994, provided for an expansion to twelve (12) buildings housing 500 animals each for a total capacity of 6,000 head of hogs. Construction Permit No. CP-A95-5, issued in 1995, provided for an expansion to twenty-four (24) buildings housing 500 animals each for a total capacity of 12,000 head of hogs. Condition four (4) of Construction Permit No. CP-A95-5 requires that a new construction permit be obtained prior to making any additions or alterations to the waste control system, making any process changes that would materially effect the waste control system, or expanding the animal loading above the design capacity. A copy of Construction Permit No. CP-A95-5 is attached hereto as Exhibit A and by this reference made a part thereof. The manure management plan for this site was due on or before November, 2002.

Anderson

36. Handlos owns and operates a hog confinement facility designated as Anderson, located in the SE¹/₄ of the SW¹/₄ of Section 14, in Douglas Township, Audubon County, Iowa. This unpermitted

facility consists of two (2) buildings in a 2,400 head finishing operation. The manure management plan for this site was due on or before September, 2003.

Home Place East

37. Handlos owns and operates a hog confinement facility designated Home Place East, located in the NW¼, Section 19, LeRoy Township and the NE¼, of Section 24, Douglas Township, Audubon County, Iowa. This unpermitted facility is a 4,000 head finishing operation with ten (10) buildings. Five (5) buildings were constructed prior to 1998, and an additional five (5) buildings were constructed in 1998. At the time Home Place East was constructed, a construction permit was required for a facility of this type, if the animal weight capacity exceeded 625,000 pounds under 567 Iowa Admin. Code 65.7(1). The manure management plan for this site was due on or before January, 2003.

Home Place West

38. Handlos owns and operates a hog confinement facility designated as Home Place West, located in the NE¼ of Section 24, Douglas Township, Audubon County, Iowa. Handlos applied for a construction permit for this facility, with the facility proposed as a three (3) building, 3,600 head finishing operation. Handlos withdrew the permit application on February 19, 2003, and constructed one building at this site for which there are no applicable separation distances. On April 28, 2003, Handlos filed a manure management plan for a second building at this site, and also submitted a construction design statement for the site certifying a drain tile around the footings is required if the confinement feeding operation is below ground, unless a licensed professional engineer determines that the bottom of the manure storage tanks will be constructed above the average annual high ground water table. On or about June 13, 2003, Handlos began construction of the second building at this site.

Currently this facility is a 2,400 head finishing operation with two (2) buildings. The manure management plan for this site was due on or before May, 2003.

Steffes East

39. Handlos owns and operates a hog confinement facility designated as Steffes East, located in the NW¼ of Section 9, Douglas Township, Audubon County, Iowa. Handlos applied for a construction permit for this facility, with the facility proposed as a three (3) building, 3,600 head finishing operation. Handlos withdrew the permit application on February 19, 2003, and constructed one building at this site for which there are no applicable separation distances. On April 28, 2003, Handlos filed a manure management plan for a second building at this site, and also submitted a construction design statement for the site certifying a drain tile around the footings is required if the confinement feeding operation is below ground, unless a licensed professional engineer determines that the bottom of the manure storage tanks will be constructed above the average annual high ground water table. On or about June 13, 2003, Handlos began construction of the second building at this site. Currently this facility is a 2,400 head finishing operation with two (2) buildings. The manure management plan for this site was due on or before May, 2003.

Steffes West

40. Handlos owns and operates a hog confinement facility designated Steffes West, located in the NW¼ of Section 9, Douglas Township, Audubon County, Iowa. This unpermitted facility is a 3,600 head finishing operation with three (3) confinement buildings.

Zaiger

41. Handlos owns and operates a hog confinement facility designated as Zaiger, located in the NW¼ of Section 12, in Douglas Township, Audubon County, Iowa. Handlos applied for a

construction permit for this facility, with the facility proposed as a three (3) building, 3,600 head finishing operation. Handlos withdrew the permit application on February 19, 2003, and constructed one building at this site for which there are no applicable separation distances. On April 28, 2003, Handlos filed a manure management plan for a second building at this site, and also submitted a construction design statement for the site certifying a drain tile around the footings is required if the confinement feeding operation is below ground, unless a licensed professional engineer determines that the bottom of the manure storage tanks will be constructed above the average annual high ground water table. On or about June 13, 2003, Handlos began construction of the second building at this site. Currently this facility is a 2,400 head finishing operation with two (2) buildings. The manure management plan for this site was due on or before May, 2003.

Zaiger Southwest

42. Handlos owns and operates a hog confinement facility designated as Zaiger Southwest, located in the SW¹/₄ of the NW¹/₄ of Section 12, in Douglas Township, Audubon County, Iowa. This unpermitted facility consists of two (2) buildings in a 2,400 head finishing operation. The manure management plan for this site was due on or before September, 2003.

Administrative Order

43. On March 22, 2002, the DNR director issued Administrative Order No. 2002-AFO-07 (a copy of which is attached, marked Exhibit B, and incorporated by reference), requiring Handlos to submit a current manure management plan for the A2 Ranch site for DNR approval within 90 days, and further requiring that Handlos retain all manure produced in confinement units between periods of manure disposal, and dispose of removed manure on land in a manner which will not cause pollution. The Order further required Handlos to pay an administrative penalty of Three

Thousand and no/100 Dollars (\$3,000.00). The Order was issued after hog waste from Handlos' A2 Ranch site was applied within 60 feet of a residence and 30 feet of that resident's well. Handlos initially appealed the Order, then withdrew his appeal and paid an administrative penalty of \$1,700.00 as settlement of the Order.

Manure Spill

44. On December 5, 2003, DNR staff investigated a manure spill reported by Handlos at the 4A King Farm site. More than 7,000 gallons of manure spilled when a hose slipped off an agitator pump while manure was being pumped out of a below building pit for land application. The pump did not have a safety device to automatically shut off in the event the hose became disconnected. Handlos' employees did not monitor the pump during the land application. The manure flowed into a surface water intake and eventually discharged into an unnamed tributary of the East Branch of the West Nishnabotna River.

Construction Without Permits

45. On or about May 10, 2002, Handlos visited DNR Field Office No. 4 in Atlantic, Iowa, and discussed permitting requirements for the 4A King facility. Handlos stated that three (3) buildings had been constructed in 2001 and that he intended to construct two (2) more buildings in 2002. Handlos further stated that the site had been leveled but the footings and concrete were not in for the new buildings. DNR staff advised Handlos that construction of the two (2) additional buildings would require a construction permit.

46. On or about December 2, 2002, DNR staff received a complaint that two (2) additional buildings had been constructed at the 4A King site without a permit. Subsequent investigation by DNR staff revealed that Handlos had constructed three (3) buildings at this site in May, October and

December, 2001, and had not initiated construction of the final two (2) buildings until July and September 2002. With the construction of the final two (2) buildings, the 4A King site was expanded to more than 1,000 animal units. Handlos did not obtain a construction permit for this expansion.

47. On January 16, 2003, DNR staff forwarded a Notice of Violation to Handlos. The Notice stated that Handlos had constructed two (2) buildings at the 4A King site without a permit. The Notice further stated the manure management plan submitted for this site was deficient because, inter alia, it did not include conservation plans for the highly erodible land and directed that a new manure management plan with sufficient information be submitted. On February 21, 2003, DNR staff directed Handlos to depopulate the fourth and fifth buildings until he obtained a construction permit for the facility. Handlos has failed to depopulate the buildings and has failed to apply for a construction permit.

48. In reviewing manure management plans submitted by Handlos for the A2 Ranch site, DNR staff noted that the manure management plans stated an animal capacity of 14,400 animals, while Construction Permit No. CP-A95-5 stated that the site had a capacity for 12,000 head of hogs. On January 14, 2003, Brian Handlos, an employee of Handlos, informed DNR staff that the buildings at the A2 Ranch site had been rehabbed to accommodate 600 animals each for a total of 14,400 animals. He further stated that, at that time, 12,800 head was housed at the site. Handlos did not obtain a permit prior to the physical modification of the buildings at the A2 Ranch site.

49. After noting that the dimensions of five (5) buildings at the A2 Ranch and Home Place East sites were the same, DNR staff inquired as to the size of the buildings and number of head in each building at the Home Place East facility. Handlos subsequently stated that, “550 head per building is what we consider our maximum occupancy at both the Ranch site and at Home East. At the Home East we have set the maximum occupancy at 500 head per building.” At either level, the Home Place

East site would exceed 625,000 pounds animal weight capacity and a construction permit was required prior to construction.

Manure Management Plans

50. On October 28, 2003, Handlos submitted a manure management plan for the A2 Ranch site. The manure management plan did not indicate the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied. To date, Handlos has five (5) manure management plans for this site which have not been approved.

51. On September 8, 2003, Handlos submitted a manure management plan for the Anderson site. The manure management plan did not indicate the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied. To date, Handlos has not submitted an approvable manure management plan for the Anderson site.

52. On November 19, 2003, Handlos submitted a manure management plan for the Home Place East site. The manure management plan did not indicate the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied. To date, Handlos has not submitted an approvable manure management plan for the Home Place East site.

53. On April 28, 2003, Handlos submitted a manure management plan for the Home Place West site. The manure management plan did not indicate the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied. To date, Handlos has not submitted an approved manure management plan for the Home Place West site.

54. On April 28, 2003, Handlos submitted a manure management plan for the Steffes East site. The manure management plan did not indicate the total nitrogen available to be applied or the number

of acres available for application. To date, Handlos has not submitted an approvable manure management plan for the Steffes East site.

55. On April 28, 2003, Handlos submitted a manure management plan for the Zaiger site. The manure management plan did not indicate the total nitrogen available or the number of acres available for application. To date, Handlos has not submitted an approved manure management plan for the Zaiger site.

56. On September 8, 2003, Handlos submitted a manure management plan for the Zaiger Southwest site. The manure management plan did not indicate the total nitrogen available, the number of acres available for application and the location where manure would be applied. To date, Handlos has not submitted an approved manure management plan for the Zaiger Southwest site.

Land Application Without an Approved Manure Management Plan

57. In December, 2002, Handlos pumped out and land applied manure from the A-2 Ranch facility to land in Section 21, Douglas Township. Handlos pumped out approximately 700,000 gallons of manure and land applied the manure at a rate of 3,500 gallons per acre. Handlos did not have an approved manure management plan for the A2 Ranch facility at the time the manure was pumped out and land applied.

Groundwater Lowering

58. On April 28, 2003, Handlos submitted manure management plans for the second buildings to be constructed at the Home Place West, Steffes East and Zaiger sites. He also submitted construction design statements for these sites, certifying that he was aware that a drain tile around the footings is required if the confinement feeding operation is below ground, unless a licensed professional engineer determines that the bottom of the manure storage tanks will be constructed above the average annual high ground water table. On June 20 and 30, 2003, DNR staff inspected the Home Place West, Steffes East and Zaiger sites. None of the sites had groundwater lowering tiles installed.

59. On September 19, 2003, DNR staff forwarded a letter to Handlos requiring that Handlos install a tile drainage system for artificially lowering the groundwater levels around the buildings at the Anderson, Home Place West, Steffes East, Zaiger and Zaiger Southwest sites by December 1, 2003. Handlos has not complied, nor has he furnished documentation that a licensed professional engineer has determined the groundwater table at these sites pursuant to the procedures of 567 Iowa Admin. Code 65.15(7)(c).

Storm Water Discharge

60. Effective October 1, 2002 through October 1, 2007, the DNR issued National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 for Storm Water Discharge Associated with Industrial Activity for Construction Activities. A copy of NPDES General Permit No. 2 is attached hereto as Exhibit C, and by this reference is incorporated herein. The permit applies to all areas of the State of Iowa, and includes storm water discharges associated with construction of the Handlos confinement buildings.

61. On February 26, 2003, DNR Field Office No. 4 received a complaint that the construction activities at the Home Place West, Steffes East and Zaiger sites required a storm water permit. On March 5, 2003, DNR staff notified Handlos of the complaint and forwarded an application packet to submit a Notice of Intent for coverage under NPDES General Permit No. 2. Handlos contacted the DNR and confirmed that greater than one acre of soil was disturbed at the Home Place West, Steffes East and Zaiger sites. Handlos failed to submit a Notice of Intent to be covered under NPDES General Permit No. 2. On March 25, 2003, DNR staff forwarded a Notice of Violation to Handlos because he had not submitted the Notice of Intent for coverage. Handlos submitted a Notice of Intent on April 22, 2003, stating that the amount of soil being disturbed was 5 acres, and that a Pollution Prevention Plan had been developed for each site.

62. DNR staff inspected the Home Place West, Steffes East and Zaiger sites on May 12, 2003 to review the Pollution Prevention Plans. Pollution Prevention Plans for these sites did not exist. With the exception of runoff retention at the entrance to the Home Place West site, Handlos had not implemented any erosion or sediment controls. DNR staff then inspected the 4A King site. Clearing, grading and excavation had taken place. Soil disturbance was greater than 5 acres. There were no erosion or sediment controls in place. Handlos had not submitted a Notice of Intent to be covered under NPDES General Permit No. 2 for the 4A King site.

63. On September 9, 2003, the DNR received a completed Notice of Intent to be covered under NPDES Storm Water General Permit No. 2 for the Anderson and Zaiger Southwest sites. The application stated that Pollution Prevention Plans had been developed for each site. On October 21, 2003, DNR staff inspected the Anderson site and found that no storm water controls had been implemented. On October 24, 2003, DNR staff reviewed the Pollution Prevention Plan for the

Anderson site and found that it did not describe any storm water controls that would be implemented at the site.

VIOLATIONS

Illegal Discharge of Hog Manure Waste

64. Hog manure waste is a “pollutant” as defined in Iowa Code Supp. section 455B.171(18).

65. The East Branch of the West Nishnabotna River and its tributary streams, watercourses, waterways, and drainage systems are each a “water of the state” as defined in Iowa Code Supp. section 455B.171(36) (2003).

66. On or about December 5, 2003, hog manure waste discharged from Handlos’ 4A King site into a surface water intake and eventually discharged into an unnamed tributary to the East Branch of the West Nishnabotna River, in violation of Iowa Code sections 455B.186(1), 459.311(1); and Administrative Order No. 2002-AFO-07.

Failure to Retain Hog Manure

67. On or about December 5, 2003, Handlos failed to retain manure generated at his 4A King site in violation of Iowa Code section 459.311(1); 567 Iowa Admin. Code 65.2(3); and Administrative Order No. 2002-AFO-07.

Construction or Modification Without a Permit

68. On or after July and September, 2002, Handlos constructed two (2) buildings at the 4A King Farm site without a construction permit in violation of Iowa Code section 459.303(1)(a)(1) and 567 Iowa Admin. Code 65.7(1)(b).

69. On or before January 16, 2003, Handlos modified the buildings at the A2 Ranch site to allow for a greater capacity of finishing hogs without a construction permit in violation of 567 Iowa Admin. Code 65.7(1)(b) and Construction Permit No. CP-A95-5.

70. On or before January 16, 2003, Handlos constructed the Home Place East facility at greater than 625,000 pounds animal weight capacity without a construction permit in violation of Iowa Admin. Code 65.7(1)(b).

Failure to Submit Acceptable Manure Management Plans

71. Since on or before November 2002, Handlos has failed to submit a manure management plan for the A2 Ranch site which indicates the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied, in violation of Iowa Code sections 459.312(10)(b) and (c); 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

72. Since on or before September, 2003, Handlos has failed to submit a manure management plan for the Anderson site which indicates the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied, in violation of Iowa Code sections 459.312(10)(b) and (c); 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

73. Since on or before January, 2003, Handlos has failed to submit a manure management plan for the Home Place East site which indicates the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied, in violation of Iowa Code sections 459.312(10)(b) and (c); 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

74. Since on or before May, 2003, Handlos has failed to submit a manure management plan for the Home Place West site which indicates the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied, in violation of Iowa Code sections 459.312(10)(b) and (c); 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

75. Since on or before May, 2003, Handlos has failed to submit a manure management plan for the Steffes East site which indicates the total nitrogen available to be applied or the number of acres available for application, in violation of Iowa Code section 459.312(10)(b); 567 Iowa Admin. Code 65.17(8)(a).

76. Since on or before May, 2003, Handlos has failed to submit a manure management plan for the Zaiger site which indicates the total nitrogen available to be applied or the number of acres available for application, in violation of Iowa Code section 459.312(10)(b); 567 Iowa Admin. Code 65.17(8)(a).

77. Since on or before September, 2003, Handlos has failed to submit a manure management plan for the Zaiger Southwest site which indicates the total nitrogen available to be applied, the number of acres available for application, and the location where manure would be applied, in violation of Iowa Code sections 459.312(10)(b) and (c); 567 Iowa Admin. Code 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b).

Manure Removal Without An Approved Manure Management Plan

78. On or about December 2, 2002, Handlos pumped out and land applied manure from the A2 Ranch site without an approved manure management plan in violation of Iowa Code section 459.312(5) and 567 Iowa Admin. Code 65.16(5).

Failure to Comply with Storm Water Discharge Regulations

79. Handlos failed to submit a Notice of Intent for coverage under NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, for the construction at the 4A King site in violation of 567 Iowa Admin. Code 64.6(1).

80. Handlos failed to submit a Notice of Intent for coverage under NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, for the construction at the Home Place West site in violation of 567 Iowa Admin. Code 64.6(1).

81. Handlos failed to submit a Notice of Intent for coverage under NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, for the construction at the Steffes East site in violation of 567 Iowa Admin. Code 64.6(1).

82. Handlos failed to submit a Notice of Intent for coverage under NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, for the construction at the Zaiger site in violation of 567 Iowa Admin. Code 64.6(1).

83. Handlos failed to obtain a storm water discharge permit for the construction at the 4A King site in violation of 567 Iowa Admin. Code 64.3(1).

84. Handlos failed to obtain a storm water discharge permit for the construction at the Home Place West site in violation of 567 Iowa Admin. Code 64.3(1).

85. Handlos failed to obtain a storm water discharge permit for the construction at the Steffes East site in violation of 567 Iowa Admin. Code 64.3(1).

86. Handlos failed to obtain a storm water discharge permit for the construction at the Zaiger site in violation of 567 Iowa Admin. Code 64.3(1).

87. After coverage by the storm water discharge permit, Handlos failed to implement Pollution Prevention Plans for the Anderson site in violation of NPDES General Permit No. 2, § IV.

88. After coverage by the storm water discharge permit, Handlos failed to adopt and implement Pollution Prevention Plans at the Home Place West site in violation of NPDES General Permit No. 2, § IV.

89. After coverage by the storm water discharge permit, Handlos failed to adopt and implement Pollution Prevention Plans at the Steffes East site in violation of NPDES General Permit No. 2, § IV.

90. After coverage by the storm water discharge permit, Handlos failed to adopt and implement Pollution Prevention Plans at the Zaiger site in violation of NPDES General Permit No. 2, § IV.

Failure to Install Drainage Tiles

91. Since on or before November 1, 2003, Handlos has failed to install drainage tiles to lower the groundwater table at the Anderson site in violation of 567 Iowa Admin. Code 65.15(7)(b).

92. Since on or before June 20, 2003, Handlos has failed to install drainage tiles to lower the groundwater table at the Home Place West site in violation of 567 Iowa Admin. Code 65.15(7)(b).

93. Since on or before June 20, 2003, Handlos has failed to install drainage tiles to lower the groundwater table at the Steffes East site in violation of 567 Iowa Admin. Code 65.15(7)(b).

94. Since on or before June 20, 2003, Handlos has failed to install drainage tiles to lower the groundwater table at the Zaiger site in violation of 567 Iowa Admin. Code 65.15(7)(b).

95. Since on or before November 1, 2003, Handlos has failed to install drainage tiles to lower the groundwater table at the Zaiger Southwest site in violation of 567 Iowa Admin. Code 65.15(7)(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, and Iowa Department of Natural Resources, request that the Court:

- a. assess a civil penalty against Defendant Lawrence Handlos pursuant to Iowa Code section 455B.191(1) for each day of violation of Iowa Code sections 455B.186(1), 459.303(1)(a)(1), 459.311(1), 459.312, 459.312(5), 459.312(10)(b) and (c); 567 Iowa Admin. Code 64.3(1), 64.6(1), 65.2(3), 65.7(1)(b), 65.15(7)(b), 65.16(5), 65.17(3)(b), 65.17(3)(e), 65.17(8)(a) and (b); Administrative Order No. 2002-AFO-07; Construction Permit No. CP-A95-5; and NPDES General Permit No. 2, Storm Water Discharge Associated With Industrial Activity for Construction Activities, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;
- b. issue a permanent injunction enjoining Defendant Lawrence Handlos from any violation of Iowa Code sections 455B.186(1), 459.303(1)(a)(1), 459.311(1), 459.312, 459.312(5), and 459.312(10)(b) and (c); 567 Iowa Admin. Code 64.3(1), 64.6(1), 65.2(3), 65.7(1)(b), 65.15(7)(b), 65.16(5), 65.17(3)(b), 65.17(3)(e), and 65.17(8)(a) and (b); Administrative Order No. 2002-AFO-07; Construction Permit No. CP-A95-5; and NPDES General Permit No. 2, Storm Water Discharge Associated With Industrial Activity for Construction Activities; and
- c. order Defendant Lawrence Handlos to immediately:
 - (1) depopulate the fourth and fifth confinement buildings at 4A King site, and the confinement buildings at A2 Ranch, Anderson, Home Place East, Home Place West, Steffes East, Zaiger, and Zaiger Southwest, until such time as Handlos has obtained required construction permits, obtained an approved manure management plan, and installed required drainage tiles to lower the groundwater table;
 - (2) submit a complete application for after-the-fact construction permits for the 4A King, A2 Ranch, and Home Place East sites;

- (3) submit complete manure management plans for the A2 Ranch, Anderson, Home Place East, Home Place West, Steffes East, Zaiger, and Zaiger Southwest sites; and
- (4) install drainage tiles to lower the groundwater table for all buildings at the Anderson, Home Place West, Steffes East, Zaiger, and Zaiger Southwest sites.

Plaintiffs further request that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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